

August 6, 2009

Via Electronic Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: VRS Compensation Rate, CG Docket Number 03-123

Dear Ms. Dortch:

The reply comments recently filed by the National Exchange Carrier Association (“NECA”) in this proceeding included estimates of the costs per conversation minute that providers will incur for video relay service (“VRS”) in the 2009-10 rate year. NECA states that these forecasts were “[b]ased on projected cost and demand data for 2009 and 2010, taken as submitted by the providers of Video Relay service.”¹ NECA did not explain the methodology that it used to develop its forecasts. The forecasts it presented, however, are anomalous and in any event should be ignored because they are irrelevant.

It is commonly known that Sorenson is the largest provider of VRS in this country. The conservative demand forecast and corresponding cost projection that Sorenson submitted to NECA for calendar 2009 and 2010, based on the costs that NECA allows to be included, produced a higher per-minute cost than the projected per-minute cost for the rate year that NECA calculated for the VRS industry excluding the “largest provider.” NECA’s reply asserts, however, that the forecasted per-minute cost for the industry including the largest provider is *lower* than the forecast excluding the largest provider.² Including a higher number (Sorenson’s forecasts for 2009 and 2010) in the calculation of a weighted average cannot lower the average. In light of the anomalies in NECA’s estimates, the FCC should simply disregard the NECA forecasts.

¹ Reply Comments of the National Exchange Carrier Association, CG Docket No. 03-123, at 2 (July 20, 2009).

² *Id.*

Moreover, NECA's "cost" estimates are irrelevant under the three-year incentive-based rate plan adopted unanimously by the Commission.³ That rate plan, which remains in effect through the 2009-2010 rate year,⁴ is the best means of furthering the statutory mandate of functional equivalency, universal availability, optimal efficiency and improved technology.⁵ As the Commission found, its three-year incentive based rate plan offers the stable, predictable rates needed to allow providers to make the investments necessary to fulfill the mandate of the Americans with Disabilities Act.⁶ Further, even assuming *arguendo* that cost forecasts for the current rate year were somehow germane, the NECA estimates are meaningless because NECA does not permit providers to include significant portions of the costs they incur in furnishing VRS to the deaf and hard-of-hearing.⁷

Finally, NECA's reply comments raise concerns about whether the confidentiality of providers' data is being adequately protected in accordance with the FCC's rules.⁸ By providing two different cost estimates – one that includes the "largest provider" and one that excludes that provider – NECA has enabled VRS competitors to develop estimates of Sorenson's individual costs based on their assessment of Sorenson's share.

In sum, the FCC should disregard NECA's estimated per-minute "costs." These estimates are inherently anomalous, exclude forecasted costs reasonably incurred in the provision of VRS, and are completely irrelevant because the Commission already approved unanimously a compensation rate for the 2009-10 rate year. In addition, any future data submitted by NECA should be filed in a manner that protects the confidentiality of each provider's information.

³ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140, ¶¶ 47-56 (2007), as corrected by Erratum, 22 FCC Rcd 21842 (2007) ("2007 Rate Methodology Order").

⁴ 2007 Rate Methodology Order ¶ 2 (VRS compensation rates "shall be effective for the 2007-2008 through 2009-2010 Fund years"); *id.* ¶ 67 ("[t]hese tiers and rates shall apply through the 2009-2010 Fund year").

⁵ 47 U.S.C. § 225(a)(3) (functional equivalency); 47 U.S.C. § 225(b)(1) (universal availability and efficiency); 47 U.S.C. § 225(d)(2) (improved technology).

⁶ See 2007 Rate Methodology Order ¶ 56.

⁷ For example, NECA's data request does not include research and development costs, costs incurred to train customers on how to use VRS or costs associated with raising and servicing capital. See, e.g., Comments of Sorenson Communications, Inc., CG Docket No. 03-123, at 33-34 and attached Declaration of Reed Steiner (July 6, 2009) (providing a more complete list of costs excluded by NECA).

⁸ 47 C.F.R. § 64.604(c)(5)(iii)(I) (requiring NECA to keep "all data obtained from contributors and TRS providers confidential").

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Pursuant to the Commission's rules, this letter is being submitted for inclusion in the public record of the above-referenced proceeding.

Respectfully submitted,

/s/ Reed Steiner
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